



DEPARTMENT OF STATE

[Public Notice: 12033]

International Traffic in Arms Regulations: Reissuance and Update of Open General Licenses 1 and 2

ACTION: Publication of updated general licenses.

SUMMARY: The Department of State, Directorate of Defense Trade Controls is publishing two updated open general licenses, permitting certain reexports and retransfers as provided therein, in the Federal Register: Open General License No. 1 and Open General License No. 2, each of which was previously issued on DDTC's website.

FOR FURTHER INFORMATION CONTACT: Dilan Wickrema, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-1282, or email DDTCCustomerService@state.gov. ATTN: Open General Licenses 1 and 2.

SUPPLEMENTARY INFORMATION: On July 13, 2022, pursuant to the authority of section 38(a) of the Arms Export Control Act (22 U.S.C. 2778(a)), as delegated to the Secretary of State by E.O. 13637, 78 FR 16129, and as further delegated by the Secretary of State, the Deputy Assistant Secretary of State for Defense Trade Controls issued two open general licenses as part of a pilot program pursuant to the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, § 120.22(b). These open general licenses were originally published with a validity date of one year, effective August 1, 2022, through July 31, 2023.

The Department of State, Directorate of Defense Trade Controls (DDTC) is now updating both open general licenses to extend the validity period and to update citations for ITAR sections moved by rulemaking subsequent to the issuance of the open general licenses on July 13, 2022. Extending the validity period of the open general licenses by three years is necessary in order to allow DDTC to collect sufficient data to consider the

usefulness of the Open General License pilot program and to provide industry with sufficient comfort to be able to rely on the open general licenses without fear that they will expire more quickly than a traditional license.

DDTC is also making certain non-substantive edits to both open general licenses to clarify that multiple defense articles need not be reexported or retransferred simultaneously and the open general licenses can be used to reexport or retransfer a single defense article.

Both updated Open General License No. 1 and Open General License No. 2 have been published on DDTC's website and are now being published in the Federal Register. The text of Open General License No. 1 and Open General License No. 2 are provided below.

Open General License No. 1

Qualifying Retransfers within Australia, Canada, and the United Kingdom

(a) The Directorate of Defense Trade Controls (DDTC), pursuant to the International Traffic in Arms Regulations (ITAR) 120.22(b), hereby provides the following Open General License No. 1. Open General License No. 1 licenses the retransfer (as defined in ITAR 120.52) of unclassified defense articles to:

- (1) the Government of Australia, the Government of Canada, or the Government of the United Kingdom;
- (2) members of the Australian Community as defined in ITAR 126.16(d), at all locations in Australia;
- (3) members of the United Kingdom Community as defined in ITAR 126.17(d), at all locations in the United Kingdom; or
- (4) Canadian-registered persons as defined in ITAR 126.5(b).

(b) The retransfer of any unclassified defense article to any of the parties listed in section

(a) is subject to all the following requirements, limitations, and provisos:

(1) Requirements. The transferor shall:

- (i) comply with the requirements of ITAR 123.9(b);
- (ii) maintain the following records of each retransfer: a description of the defense article, including technical data; the name and address of the recipient and the end-user, and other available contact information (e.g., telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end use of the defense article; the date of the transaction; and the method of transfer;
- (iii) ensure that such records are made available to DDTC upon request; and
- (iv) utilize Open General License No. 1 as the license or other approval number or exemption citation.

(2) Limitations and provisos:

- (i) the defense article to be retransferred was originally exported pursuant to a license or other approval issued by DDTC pursuant to section 38 of the Arms Export Control Act (AECA), the Defense Trade Cooperation Treaty between the United States and Australia (ITAR 126.16), or the Defense Trade Cooperation Treaty between the United States and the United Kingdom, (ITAR 126.17);
- (ii) a defense article originally exported pursuant to ITAR 126.6(c) may not be retransferred under this license;
- (iii) a defense article described in ITAR 126.16(a)(5) or 126.17(a)(5) may not be retransferred under this license;
- (iv) a defense article may not be retransferred under this license if it is listed on the Missile Technology Control Regime (MTCR) Annex or identified as Missile Technology (MT) on the United States Munitions List (USML) in ITAR part 121;
- (v) a defense article may not be retransferred under this license if it will be used to support the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, or

processing of a missile, UAV, space-launch vehicle, item listed on the MTCR Annex, or item listed as MT on the USML in ITAR part 121;

(vii) technical data may only be retransferred under this license for the purpose of organizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article;

(viii) any major defense equipment (as defined in ITAR 120.37) valued (in terms of its original acquisition cost) at \$25,000,000 or more and any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$100,000,000 or more, may only be retransferred under this license for the purpose of:

i. maintenance, repair, or overhaul defense services, including the repair of defense articles used in furnishing such services, if the retransfer will not result in any increase in the military capability of the defense articles and services to be maintained, repaired, or overhauled; or

ii. a temporary retransfer of defense articles for the sole purpose of receiving maintenance, repair, or overhaul;

(viii) the retransfer must take place wholly within the physical territory of Australia, Canada, or the United Kingdom;

(ix) any retransfer of a defense article other than technical data is for end use by, or operation on behalf of, the Government of Australia, the Government of Canada, or the Government of the United Kingdom; and

(x) Open General License No. 1 may not be utilized by persons to whom a presumption of denial is applied by DDTC pursuant to ITAR 120.16(c) or 127.11(a), including, among other reasons, for past convictions of certain U.S. criminal statutes or because they are otherwise ineligible to contract with or receive an export or import license from an agency of the U.S. Government.

(c) Open General License No. 1 is an other approval as defined in ITAR 120.57(b), including for purposes of ITAR part 127. Any retransfer that satisfies the requirements specified herein may be undertaken pursuant to Open General License No. 1.

(d) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of any retransfer conducted pursuant to Open General License No. 1.

Entry into Force

Open General License No. 1 is valid for three years, effective August 1, 2023 through July 31, 2026. The Department may later consider reissuing Open General License No. 1 prior to July 31, 2026 and extend the period of validity, or otherwise amend the license.

Open General License No. 1 is limited to transactions described herein, all other transactions subject to the ITAR require a separate license or approval as described in the ITAR.

The Department of State approves Open General License No. 1 pursuant to ITAR 120.22(b) and subject to the enumerated limitations, provisos, and requirements as well as the requirements contained elsewhere in the ITAR. Open General License No. 1 may not be utilized unless and until these limitations, provisos, and requirements have been satisfied.

Please direct any questions regarding Open General License No. 1 to the Office of Defense Trade Controls Policy at telephone (202) 663-1282, or email

DDTCCustomerService@state.gov.

Jessica Lewis Assistant Secretary Bureau of Political-Military Affairs

Dated: March 23, 2023

Open General License No. 2

Qualifying Reexports Between or Among Australia, Canada, and the United Kingdom

(a) The Directorate of Defense Trade Controls (DDTC), pursuant to the International Traffic in Arms Regulations (ITAR) 120.22(b), hereby provides the following Open General License No. 2. Open General License No. 2 licenses the reexport (as defined in ITAR 120.51) of unclassified defense articles between or among:

- (1) the Government of Australia;
- (2) the Government of Canada;
- (3) the Government of the United Kingdom;
- (4) members of the Australian Community as defined in ITAR 126.16(d), at all locations in Australia;
- (5) members of the United Kingdom Community as defined in ITAR 126.17(d), at all locations in the United Kingdom; and
- (6) Canadian-registered persons as defined in ITAR 126.5(b).

(b) The reexport of any unclassified defense article to any of the parties listed in section

(a) is subject to all the following requirements, limitations, and provisos:

(1) Requirements. The transferor shall:

- (i) comply with the requirements of ITAR 123.9(b);
- (ii) maintain the following records of each reexport: a description of the defense article, including technical data; the name and address of the recipient and the end-user, and other available contract information (e.g., telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end use of the defense article; the date of the transaction; and the method of transfer;
- (iii) ensure that such records are made available to DDTC upon request; and

(iv) utilize Open General License No. 2 as the license or other approval number or exemption citation.

(2) Limitations and provisos:

(i) the defense article was originally exported pursuant to a license or other approval issued by DDTC pursuant to section 38 of the Arms Export Control Act (AECA), the Defense Trade Cooperation Treaty between the United States and Australia

(ITAR 126.16), or the Defense Trade Cooperation Treaty between the United States and the United Kingdom, (ITAR 126.17);

(ii) a defense article originally exported pursuant to ITAR 126.6(c) may not be reexported under this license;

(iii) a defense article described in ITAR 126.16(a)(5) or § 126.17(a)(5) may not be reexported under this license;

(iv) a defense article may not be reexported under this license if it is listed on the Missile Technology Control Regime (MTCR) Annex or identified as Missile Technology (MT) on the United States Munitions List (USML) in ITAR part 121;

(v) a defense article may not be reexported under this license if it will be used to support the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, or processing of a missile, UAV, space-launch vehicle, item listed on the MTCR Annex, or item listed as MT on the USML in ITAR part 121;

(vi) technical data may only be reexported under this license for the purpose of organizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article;

(vii) any major defense equipment (as defined in ITAR 120.37) valued (in terms of its original acquisition cost) at \$25,000,000 or more and any defense article or related

training or other defense service valued (in terms of its original acquisition cost) at \$100,000,000 or more, may only be reexported under this license for the purpose of:

- i. maintenance, repair, or overhaul defense services, including the repair of defense articles used in furnishing such services, if the reexport will not result in any increase in the military capability of the defense articles and services to be maintained, repaired, or overhauled; or
- ii. a temporary reexport of defense articles for the sole purpose of receiving maintenance, repair, or overhaul;

(viii) the reexport must take place wholly within or between the physical territory of Australia, Canada, or the United Kingdom;

(ix) any reexport of a defense article other than technical data is for end use by, or operation on behalf of, the Government of Australia, the Government of Canada, the Government of the United Kingdom, or the Government of the United States; and

(x) Open General License No. 2 may not be utilized by persons to whom a presumption of denial is applied by DDTC pursuant to ITAR§ 120.16(c) or 127.11(a), including, among other reasons, for past convictions of certain U.S. criminal statutes or because they are otherwise ineligible to contract with or receive an export or import license from an agency of the U.S. Government.

(c) Open General License No. 2 is an other approval as defined in ITAR 120.57(b), including for purposes of ITAR part 127. Any reexport that satisfies the requirements specified herein may be undertaken pursuant to Open General License No. 2.

(d) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of any reexport conducted pursuant to Open General License No. 2.

Entry into Force

Open General License No. 2 is valid for three years, effective August 1, 2023 through July 31, 2026. The Department may later consider reissuing Open General License No. 2 prior to July 31, 2026 and extend the period of validity, or otherwise amend the license.

Open General License No. 2 is limited to transactions described herein, all other transactions subject to the ITAR require a separate license or approval as described in the ITAR.

The Department of State approves Open General License No. 2 pursuant to ITAR 120.22(b) and subject to the enumerated limitations, provisos, and requirements as well as the requirements contained elsewhere in the ITAR. Open General License No. 2 may not be utilized unless and until these limitations, provisos, and requirements have been satisfied.

Please direct any questions regarding Open General License No. 2 to the Office of Defense Trade Controls Policy at telephone (202) 663-1282, or email *DDTCCustomerService@state.gov*. Jessica Lewis Assistant Secretary Bureau of Political-Military Affairs

Dated: March 23, 2023.

Jessica Lewis,

*Assistant Secretary Bureau of Political-Military Affairs,
Department of State.*

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